***THE HON'BLE SRI JUSTICE K.C.BHANU**

+W.P.No.17735 of 2001

%Dated 19-08-2005

Between:

P.Saiddappa, S/o.Adeppa,
Dwarakamayee, R/o.18-179,
Plot No.251, Madhavanagar, Kurnool.

..... PETITIONER

AND

1 The Chairman, Rayalaseema Grameena Bank,
Head Office, Cuddapah and others.

.....RESPONDENTS

! Counsel for the Petitioner: Mr.G.Krishna Murthy

^Counsel for the Respondents: Mr.K.Srinivasa Rao

<GIST

>HEAD NOTE:

? Cases referred

1. AIR 1990 SUPREME COURT 1607
2. (1994) 6 Supreme Court Cases 301
3. 1998 (4) ALD 437 (DB)

4. 1999 (1) ALT 550

5. 2002 Suppl. (1) ALD 344 (DB)

6. 2002 Suppl. (2) ALD 56

7. 2002 Suppl. (2) ALD 699 (DB)

8. (2004) 4 SCC 79

9. (1990) 4 SCC 207

10. (1989) 1 SCC 101

11. 1991 Supp (1) SCC 81

12. 2000 (1) SLR 689

13. 1996 (4) SLR 62 (SC)

THE HON'BLE SRI JUSTICE K.C. BHANU

WRIT PETITION NO : 17735 of 2001

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THE HON'BLE SRI JUSTICE K.C. BHANU

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ORDER:

Challenging the action of the respondents in placing

the petitioner at serial No.242 in the final seniority list in Cir.No.197/STF/59/2000, dated 15-11-2000 as illegal and arbitrary and consequently to direct the respondents to place the petitioner at serial No.183 in the final seniority list as per his date of joining in the post, which is the criteria, the present writ petition is field.

The brief facts that are necessary for the disposal of the present writ petition may be

stated as follows:

The petitioner joined in the respondent bank as a Clerk-cum-cashier on 01-05-1984. His probation has been declared and his services were regularized with effect from 01-05-1985. While so, the second respondent issued circular No.117/STF/25/90, dated 24-09-1990, wherein a seniority list in the cadre of Junior Clerk-cum-cashiers as on 25-06-1990 was prepared and communicated to all the individuals. In that seniority list, the name of the petitioner was shown at serial No.69 with employee No.0687. The said seniority list has been prepared as per the date of joining into service. Later on, the second respondent issued another circular No.126/STR/41/95, dated 26-08-1995 wherein a fresh seniority list of clerk-cum-cashiers, after rectifying the anomalies existing in the earlier list, was prepared and published and communicated to the individuals. In that seniority list, the name of the petitioner was not shown as it relates to only senior clerk-cum-cashiers. The petitioner submits that if both the seniority lists are clubbed together and a common seniority list is prepared, he would be at serial No.183.

Thereafter, the second respondent issued another circular No.197/STF/59/2000, dated 15-11-2000, wherein the seniority list of clerk-cum-cashiers as on 01-10-2000 was prepared and communicated to all the individuals. As per the seniority list dated 15-11-2000, the petitioner was placed at serial No.242, which is quite contrary to the earlier two seniority lists. Immediately, the petitioner filed his objections on 20-11-2000 requesting the second respondent to rectify the mistake/anomaly in the final seniority list dated 15-11-2000 and also to place his name at serial No.183 as per his date of joining into service. But, no action has been taken even till to date on the objections filed by the petitioner. Challenging the same the present writ petition is filed.

A counter affidavit has been filed by the respondents stating that the petitioner joined in the bank as a Junior clerk-cum-cashier on 01-05-1984 in direct recruitment.

His probation was extended and confirmed with effect from 21-05-1985 and his seniority had been fixed accordingly. The respondent bank had fixed the seniority of the petitioner in accordance with Regulation 13 of the Rayalaseema Grameena Bank (Staff) Service Regulations 1980
(for short 'Regulations 1980') and therefore his claim for fixation of his seniority with effect from the date of joining i.e., 01-05-1984 cannot be considered. Hence, there are no grounds to interfere with the impugned proceedings.

The learned counsel appearing for the petitioner contended that the petitioner is entitled for counting his seniority from the date of joining in the service and not from the date of declaring
probation; that the petitioner was selected and joined as a Clerk-cum-Cashier on 01-05-1984 and his probation was not declared because he was absent for twenty days for attending to some examinations, and thereafter, his probation was duly declared on 21-05-1985, and therefore, his seniority has to be counted with effect from the date of joining i.e., 01-05-1984, but not from the date of declaring his probation on 21-05-1985 and hence, he prays to quash the impugned proceedings. He relied upon several decisions with regard to determination of the seniority, which will be referred to at appropriate time.

On the other hand, the learned counsel appearing for the respondents contended that in the first instance the bank has taken the date of joining for the purpose of determining the seniority and after receiving certain objections from some candidates, it has taken a decision to revise the seniority as per Regulation 13 (2) and 13 (3) of Regulations; that the present seniority list has been finalized in accordance with Regulation
13 (2) and 13 (3) of the Regulations; that the decisions relied upon by the counsel for the petitioner have no application to the present case, because Regulation 13 (3) is not the subject matter of the dispute in any of the decisions referred to by the learned

counsel. She further contended that the seniority of the petitioner as per the date of joining in the post cannot be granted in view of the fact that his seniority was determined under Regulation 13 (3) of Regulations 1980 and the said Regulation was not declared by any of the Courts as *ultra vires* and in this writ petition also the said Regulation was not challenged. Hence, she prays to dismiss the writ petition.

Admittedly, the petitioner joined in the respondent bank as a clerk-cum-cashier on 01-05-1984. The prayer in this writ petition is that putting the petitioner at serial No.242 in the final seniority list in Cir.No.197/STF/59/2000, dated 15-11-2000 is illegal and unjust and for a consequential direction to the respondents to place him at serial No.183 in the final seniority list as per his date of joining in the post, which is the criteria. The second respondent issued a circular dated 24-09-1990, wherein the seniority list of Junior clerks-cum-cashiers, as on 25-06-1990, was prepared and communicated to all the individuals. In that seniority list, the name of the petitioner was shown at serial No.69. According to the petitioner, the said seniority list has been prepared as per the date of joining of the employees into service. Therefore, the petitioner did not have any objection. Later, the second respondent by proceedings dated 26-08-1985 issued a fresh seniority list of

clerk-cum-cashiers after rectifying some anomalies existing in the earlier list. In the said list, the name of the petitioner was not shown as the list admittedly relates to only Senior clerk-cum-cashiers. Again, the second respondent issued a circular dated

15-11-2000, wherein the seniority list of the clerk-cum-cashiers on 01-10-2000 is prepared and communicated to all the individuals. As per the seniority list dated 15-11-2000, the petitioner was placed at serial No.242 which is quite contrary to the earlier

two seniority lists. Then, the petitioner filed an objection on

20-11-2000 with regard to the anomaly in the seniority list dated 15-11-2000 and requested to place him at serial No.183 as per his date of joining into service, but no

action has been taken.

It is not in dispute that Regulations 1980 govern the service conditions of the employees of the respondent-bank. Regulations 13 (2) and 13 (3) are the relevant Regulations for the purpose of determining the seniority. Regulation 13 (2) reads as follows:

> "The inter seniority of officers of employees directly recruited in a batch to any grade or scale shall be reckoned with reference to the rank allotted to them at the time of such recruitment."

The above provision is very clear and unambiguous that when certain employees are directly recruited in a batch, their seniority has to be reckoned with reference to the grade or scale in the selection process.

Regulation 13 (3) reads as follows:

> "In the case of an officer or employee whose probation has been extended, his seniority shall be reckoned just below all the officers of employees, if any, recruited or promoted in the same batch along with him."

The above provision also, in clear and categorical terms, reveals that in the case of an employee's probation has been extended, the seniority of such employee shall be reckoned just below all the officers of the same batch. Admittedly, no challenge has been made to Regulation 13 (3) of Regulations 1980. So also, it is not brought to the notice of this Court that the said Regulation has been struck down by the Courts as violative of any of the Articles of the Constitution of India.

The specific case of the respondents in the counter affidavit is that the petitioner joined in the bank on 01-05-1984.

His probation was extended and confirmed with effect from

21-05-1985 and his seniority has been fixed accordingly.

It is not disputed before this Court that in respect of directly recruited officers or employees, the seniority of the staff in a batch was according to their position in the merit list. It is also not in dispute that as per the Model (Staff) Service Regulations circulated by the Government of India vide letter No.F.2-16/79-RRB, dated 13-05-1980, the inter se seniority of employees directly recruited in a batch of any grade or scale shall be reckoned with reference to the rank allotted to them at the time of such recruitment.

The learned counsel placed strong reliance on the decision reported in **DIRECT RECRUIT CLASS II ENGG. OFFICERS' ASSOCN. v. STATE OF MAHARASHTRA** , wherein it was held:

> "To sum up, we hold that:
>
> (A) Once an incumbent is appointed to a post according to rule, his seniority has to be counted from the date of his appointment and not according to the date of his confirmation. The corollary of the above rule is that where the initial appointment is only ad hoc and not according to rules and made as a stop-gap arrangement, the officiation in such post cannot be taken into account for considering the seniority.
>
> (B) If the initial appointment is not made by following the procedure laid down by the rules but the appointee continues in the post uninterruptedly till the regularisation of his service in accordance with the rules, the period of officiating service will be counted.
>
> (C) When appointments are made from more than one source, it is permissible to fix the ratio for recruitment from the different sources, and if rules are framed in this regard they must ordinarily be followed strictly.
>
> (D) If it becomes impossible to adhere to the existing quota rule, it should be substituted by an appropriate rule to meet the needs of the situation. In case, however, the quota rule is not followed continuously for a number of years because it was impossible to do so the inference is irresistible that the quota rule had broken down.
>
> (E) Where the quota rule has broken down and the appointments are made from one source in excess of the quota, but are made after following the procedure prescribed by the rules for the appointment, the appointees should not be pushed down below the appointees from the

other source inducted in the service at a later date.

(F) Where the rules permit the authorities to relax the provisions relating to the quota, ordinarily a presumption should be raised that there was such relaxation when there is a deviation from the quota rule.

(G) The quota for recruitment from the different sources may be prescribed by executive instructions, if the rules are silent on the; subject.,

(H) If the quota rule is prescribed by an executive instruction, and is not followed continuously for a number of years, the inference is that the executive instruction has ceased to remain operative.

(I) The posts held by the permanent Deputy Engineers as well as the officiating

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Deputy Engineers under the State of Maharashtra belonged to the single cadre of Deputy Engineers.

(J) The decision dealing with important questions concerning a particular service given after careful consideration should be respected rather than scrutinised for finding out any possible error. It is not in the interest of Service to unsettle a settled position.

With respect to Writ Petition No. 1327 of 1982, we further hold:

(K) That a dispute raised by an application under Art. 32 of the Constitution must be held to be barred by principles of res judicata including the rule of constructive res judicata if the same has been earlier decided by a competent Court by a judgment which became final."

The issue that falls for consideration is for fixation of seniority in respect of the employees, who are directly recruited, and the promotees. In the aforementioned decision, it is categorically held that when an appointment is made in accordance with the rule, the seniority has to be counted from the date of appointment and not from the date of confirmation. Therefore, the above decision has no application to the present facts of the case except to the fact that the seniority of the employee has to be counted from the date of his appointment.

The next decision relied upon by the learned counsel is reported in **CHAIRMAN. PURI GRAMYA BANK v. ANANDA CHANDRA DAS** , wherein it was held:

> "On comparative evaluation of the respective merits of the candidates for direct recruitment, the Board had prepared the merit list on the basis of the ranking secured at the time of the selection. It is settled law that if more than one are selected, the seniority is as per ranking of the direct recruits subject to the adjustment of the candidates selected on applying the rule of reservation and the roster."

The question falls for consideration in the above case is that what shall be the ranking among the direct recruits. But, that is not the issue that falls for consideration before this Court.

He also relied upon a decision reported in **G.KOTESWARA RAO v. CHAITANYA GRAMEENA BANK, GUNTUR DIST** , wherein it was held:

> "Therefore, the preparation of seniority on any basis other than the ranking in the selection list will be contrary to the Rules."

The above case is a case where the seniority list was prepared in accordance with the date of joining, but not in accordance with the merit list.

He also placed strong reliance on the decision of this Court reported in **CHAITANYA GRAMEENA BANK v. S.V.L. NARAYANA** , wherein it was held:

> "From the above, it follows that Rule 13 (3) of the Rules is contrary to the reason and arbitrary. It is true in *M.P.chandoria's* case (2 supra) a Division Bench of Supreme Court consisting of K.Ramaswamy and G.B. Pattnaik, JJ., held that in the case of an Officer seniority was counted with effect from the date of his passing the test under Rule 12 (a) (ii) is valid. As pointed out above, the judgment in *Direct Recruit Class II Engg. Officers' Association's case* (4 supra) is by a Bench consisting of five Judges to which K.Ramaswamy, J. is a party. However, the judgment in *Direct Recruit Class II Engg. Officers' Association's case* (4 supra) was not brought to the notice of the learned Judges in *M.P.Chandoria's case* (2 supra). The principles laid down in *M.P.Chandoria's case* (2 supra) runs counter to the judgment in
> *Direct Recruit Class II Engg. Officer's Association's case* (4 supra)."

The above observation cannot be taken as a decision or ratio of the Court in view of the fact that the above order has been passed in the Review W.P.M.P. That is a case, where the review of the judgment in the writ petition was made, when the decision

was confirmed in the writ appeal. There cannot be any further observations in the Review Petitions holding that Regulation 13 (3) is contrary to the reason and arbitrary in view of the fact that the said Regulations has not been challenged in the writ petition. Since the Review Petition was dismissed, any further observation cannot be taken as a ratio or the law laid down. Therefore, the above decision cannot be relied upon for the purpose that it has been laid down a ratio.

The counsel for the petitioner also relied upon another decision reported in **MANJIRA GRAMEENA BANK, SANGAREDDY, MEDAK v. M.ASHOK KUMAR ,** wherein it was held:

> "Therefore, the extension of the probation of the respondent cannot be taken into consideration for the purpose of reduction of his seniority."

The question that falls for consideration in the above case is whether the period of suspension of an employee therein can be ignored for the purpose of reckoning the seniority of an employee? That is a case where the probation of the respondent therein was extended.

The learned counsel also relied upon another decision reported in **G.BHEEMSEN RAO AND OTHERS v. STATE BANK OF INDIA, HYD.** , wherein it was held:

> "When once an appointment itself is made in accordance with law applicable to substantive appointment as in the present case and the determination of seniority has to be counted as per the ranking assigned by the Selection Committee at the time of recruitment, the same will be reflected in the Seniority List as per Regulation 13 (2). Merely because the probation of an officer is extended, that does not automatically result in reduction of length of his service and forego the seniority if he successfully completes the probation at a later dater. In view of the same,

his seniority cannot be reduced by placing below the officers who were recruited in the same batch. The mere extension of probation only disentitles him to claim promotion but does not reduce the length of service. If Regulations 13 (2) and 13 (3) harmoniously interpreted, the only plausible conclusion that will emerge is if the initial appointment made was d*e hors* the rules, the entire length of such service cannot be counted for seniority. In other words, the appointee will become a member of the service in substantive capacity from the date of his appointment only. If the appointment is made according to the regulations, seniority would be counted from that date. If in case the appointment is made by way of *ad hoc* or stop gap arrangement due to administrative exigencies for want of vacancies or suitability, probation is extended, in such cases only such appointee will take the last rank among the approved probationers but not otherwise. In view of the same, Regulation 13 (2) and 13 (3) will operate in different fields as stated above. Any interpretation made otherwise will mount to violence to the seniority rule, which should be discouraged. In view of the same, once the Rule 13 (2) postulates the determination of seniority on the ranking assigned at the time of initial recruitment in a particular grade or scale merely because the probation of an officer has been extended he will not loose his seniority which was assigned to him as per Regulation 13 (2)."

The question that falls for consideration before the learned single Judge in the above case is whether the fixation of seniority is from the date of appointment or from the date of joining as such. That is a case where the petitioners therein joined earlier to the unofficial respondents and therefore they were shown rightly as seniors in the service particulars of the branch managers.

Therefore, it has to be seen whether the observation that Regulation 13 (3) of Regulations 1980 is contrary to the reason and arbitrary is a binding precedent of law or not. This aspect of the case will be considered little later after referring to the judgments relied upon by the learned counsel for the petitioner.

The learned counsel also relied upon a decision reported in **G.DHARMA VEERA REDDY v. GOVERNMENT OF ANDHRA PRADESH** , wherein it was held:

"It is one thing to say that the services of a person have been regularized

> for certain purposes but that by itself may not mean that they would rank senior to others who have been appointed following the procedure laid down under the statutory rules."

The issue involved before the Division Bench in the above case is that whether the seniority has to be counted from the date of initial appointment or on the basis of their ranking according to the Public Service Commission.

The learned counsel also relied upon an unreported judgment of this Court decided in **R.SRINIVASA BABU V. GODAVARI GRAMEENA BANK** (W.P.No.1351 OF 2003, Dated 19-06-2005), wherein it was held that the seniority has to be reckoned with reference to the rank allotted to them at the time of their selection in a batch. That is a case where basing on the ages of the candidates, the seniority list has been prepared which is contrary to Regulation 13 (v) of Godavari Grameena Bank Staff Service Regulations, 1987.

He also relied upon an unreported judgment of this Court decided in **D.SRINIVAS v. SRI SATHAVAHANA GRAMEENA BANK** (W.P.No.9540 of 2000, dated 29-09-2000), wherein it was held:

> "I am in respectful agreement with the said decision. Accordingly the writ petition is allowed and a direction is given to the respondent to fix the seniority as per the rank assigned to petitioners at the time of selection without reference to the fact that their probation was extended as they proceeded on leave for some time, and revise the seniority list."

Following the decision reported in CHAITANYA GRAMEENA BANK's case (4 supra), the above observation was made. The decision relied upon by this Court relates to a Review W.P.M.P. which was dismissed by this Court. As this Court already indicated, there cannot be any further observations in the Review Petitions. In the CHAITANYA GRAMEENA BANK's case (4 supra), the probation of the one officer was extended on personal sick grounds. Therefore, the seniority has to be

reckoned from the date of confirmation and the Regulation 13 (3) has not brought to the notice of the learned Single Judge who decided the issue and that the Review Petition was filed. That petition was dismissed making observations as stated above.

Therefore, in all the above decisions, the issue involved is the inter se seniority between the persons selected in the same batch or the inter se seniority between the direct recruits and promotees.

As rightly contended by the learned counsel for the respondents that the issue relating to Regulation 13 (3) of Regulations 1980 has not fallen for consideration in any one

of the judgments referred to. In none of the judgments, the challenge was made to Regulation 13 (3). The observation made in **G.BHEEMSEN RAO AND OTHERS v. STATE BANK OF INDIA**

(6 supra) and also in **CHAITANYA GRAMEENA BANK v. S.V.L. NARAYANA** (4 supra) that Regulation 13 (3) of the Staff Regulation is contrary to the reason and arbitrary is not a binding precedent of law nor a ratio decidendi. At best, it can be said to be a passing observation by obiter dicta. On this aspect, it is pertinent to refer to a decision reported in **R.L.JAIN v. DDA** , wherein it was held:

> "It is well settled that a decision is an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically follows from the various observations made therein. (See krishena Kumar v. Union of India , Municipal Corpn. of Delhi v. Gurnam Kaur , and Orient Paper and Industries Ltd. v. State of Orissa).

From the above decision, it is clear that the observations made in the decisions should be understood in the context of the issues raised before the Court. The essence of the decision is its ratio, but not every observation found therein.

The learned counsel appearing for the respondents placed reliance on an unreported judgment of this Court decided in

M.C.V. RAMANA REDDY V. RAYALASEEMA GRAMEENA BANK (W.P.No.7973 of 1999, dated 19-07-2005), wherein it was held:

> "Admittedly, in W.A.No.1181 of 1997 only respondents 5, 11, 12 and 17 in Writ Petition No.10500 of 1995 were the appellants and the Division bench of this Court did not go into the aspect of applicability of Regulation 13 (3) of the Regulations for the purpose of seniority. Even assuming the proposition laid down by the Supreme Court reported in DIRECT RECRUIT's case (5 supra) is taken into consideration, in the light of Regulation 13 (3), the seniority of the petitioner was altered. Therefore, looking from any angle, the alteration of seniority of the petitioner cannot be said to be illegal or arbitrary."

She also relied upon a decision reported in **TATE OF M.P. v. RAMKINKAR GUPTA** , wherein it was held:

> "According to sub-clause (ii) of clause (a) of rule 12 in a case like the present where a person had been allowed to continue in service after the period of probation had been completed and he is confirmed subsequently, it is for the appointing authority to decide as to from what date he should be assigned the seniority. In the present case the decision of the State Government was that he should be assigned the seniority w.e.f.19.1.1984. The aforesaid rules have been considered by this Court in the case of M.P.Chandoria v. State of Madhya Pradesh and others, JT 1996 (5) SC 38 : [1996 (4) SLR 62 (SC)]. The principle laid down by this Court in Chandoria's case (supra) was that if a person does not pass the test then the appointing authority is empowered to assign the seniority in a lower level than the one which was assigned by the Public Service Commission. That being so the decision to assign the seniority to Respondent No.1 w.e.f.19.1.1984 is in accordance with Rules."

Regulations 13 (2) and 13 (3) are independent Regulations. One deals with determination of seniority basing on the rank allotted at the time of recruitment and another deals that because of extension of probation, the seniority shall be reckoned just below all the officers of the same batch. Regulation 13 (3) was not the subject matter of the issue in any of the writ petitions.

In **M.P.CHANDORIA V. STATE OF MADHYA PRADESH & OTHERS** , the Apex Court held as under:

> "5. Under Rule 12, the seniority of the members of the service of a district branch or group of posts of that service, shall be determined in accordance with the principles laid down therein. Sub-clause (i) of clause (a) envisages that the seniority of a directly recruited government servant appointed on probation shall count during his probation from the date of his appointment; the proviso is not relevant. Sub-clause (ii) envisages that the same order of inter se seniority of direct recruits is maintained by confirmation of the normal period of probation. If, however, the period of probation of any direct recruit is extended, the appointing authority should determine the date from which the candidate should be assigned seniority. Until the probation period is completed and he is confirmed in the post, he does not become a member of the service on successful completion of the probation and passing of the prescribed tests or conditions precedent to declaration of completion of the probation period. So, mere passage of time of one year does not entitle a probationer to be a member of the service. He remains to be on temporary service. On completion of probation period, the appointing authority should confirm him in a pending post available or grant him a quashi-permanent status. As soon as the post is available, he should be confirmed. In view of the admitted position that he did not pass the test, the appointing authority considered that is seniority would be counted w.e.f. the date of his passing the test. Rule 12 (a) (ii) clearly empowers the appointing authority to assign, in these circumstances, the seniority in lower level than the one assigned by the Public Service Commission. We do not find any illegality committed by the authorities in giving seniority from the date of his passing the test."

Therefore, from the above decision, it is clear that when the probation of an officer is extended, he shall be placed below the persons of his batch, whose probation was declared prior to him.

The entire grievance of the petitioner is that his seniority has been fixed in the first instance at serial No.69 and thereafter he was not shown in the seniority list dated 26-08-1985, but as per the another seniority list dated 15-11-2000, he was shown at serial No.242. It is for the petitioner to plead and establish that the seniority list dated 15-11-2000 was made contrary to Regulations 13 (2) and 13 (3) of Regulations

1980. No specific mention has been made in the affidavit that though he secured higher marks, but the names of some candidates, who secured less marks than him in the selection process, have been shown above him in the seniority list dated 15-11-2000. As seen from the affidavit, the entire grievance of the petitioner is that if the date of joining

into service, in the cadre of clerk-cum-cashier, is taken into consideration, he would have been placed at serial No.183.

But, the petitioner is forgetting about Regulation 13 (3), which says that when the probation of an employee is extended, his seniority has to be reckoned as the last person in the same batch. Regulation 13 (3) has not been challenged in this writ petition as violative of Article 14 or any one of the Articles of the Constitution. But, the petitioner brought the seniority lists dated 24-09-1990 and 15-11-2000 stating that some of the persons who secured

less marks than him were shown above him as seniors in

the seniority list. He brought to the notice of this Court the

names of some persons i.e., S.Ravi Kumar, K.Krishna Moorthy, I.Satyanarayana, K.Vakula Devi, C.Narasimhudu, M.M.Prasad Naidu, K.Geetha, K.Ramalaxmaiah, T.J.N.Ramesh Kumar and M.V.Subba Reddy, who secured less marks than the petitioner, were shown above him. It is a fact that all the aforesaid persons have secured less marks than the petitioner. The contention of the petitioner can be accepted if it is only a violation relating to Regulation 13 (2). Under Regulation 13 (2), the seniority has to be determined with reference to the marks secured in the recruitment process. But here is a case where though the petitioner was joined on 01-05-1984, but his probation has been extended by 20 days. Admittedly, the petitioner proceeded on leave from 08-08-1984 to 20-08-1984 for 13 days and 21-08-1984 to 27-08-1984 for 7 days for writing final P.G. Examinations. Ultimately, his probation

was declared with effect from 21-05-1985.

It is the specific case of the petitioner in the additional affidavit that the seniority list dated 15-11-2000 is prepared purely basing on Regulation 13 (3) of Regulations 1980. According to him, the said Regulation has been set aside by this Court in several cases. As already stated by this Court, Regulation 13 (3) has not been struck down by this Court as arbitrary and illegal in any of the decisions referred to. A passing observation was made by this Court that Regulation 13 (3) of Regulations 1980 is arbitrary. It is not known whether any specific challenge was made in any of the writ petitions with regard to Regulation 13 (3). Since Regulation
13 (3) is not under challenge before this Court in this writ petition, placing the petitioner at the last place of all the candidates of the same batch cannot be said to be arbitrary and illegal in view of the fact that his probation has been extended for a period of 20 days in view of his absence. Regulation 13 (3) is very clear that when the probation of an employee has been extended, the seniority of such employee shall be reckoned just below all the officers recruited in the same batch. Therefore, the relief sought for by the petitioner cannot be granted.

The writ petition is totally devoid of merit and it is accordingly dismissed. No order as to costs.

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JUSTICE K.C.BHANU

Date: 19-08-2005.

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Note: L.R. copy to be marked.

Issue C.C. in one week